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ALDERWOODS GROUP, INC.,  
ET AL.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Claude Bryant, et al.,  
  
Plaintiffs,  
  
v.  
  
Alderwoods Group, Inc., et al.,  
  
Defendants.

Case No. C 07-05696 SI; C 08-01190  
SI

**JOINT RESPONSE TO ORDER  
TO SHOW CAUSE (DOCKET NO.  
32)**

1       **I. INTRODUCTION**

2           All of the actions described in this Joint Response relate to the claims of current  
3 and former employees who assert violations of federal and state laws resulting from their  
4 allegations that they were not properly compensated for all hours worked. The defendants  
5 in these matters include Alderwoods Group, Inc. (“Alderwoods”), Service Corporation  
6 International (“SCI”), subsidiaries of SCI and employees of the various corporate  
7 defendants. Prior to November, 2006, Alderwoods and SCI were competitors in the  
8 funeral services industry. In November, 2006, however, Alderwoods was merged with a  
9 subsidiary of SCI.

10          On March 18, 2008, the Court issued an Order to Show Cause requiring counsel for  
11 the parties, in advance of the April 7, 2008 Case Management Conference<sup>1</sup>, to submit a  
12 joint statement “informing the Court of the status and background of all pending and  
13 closed wage-related cases, in both state and federal court, brought by plaintiffs or  
14 similarly situated plaintiffs against these defendants.” In addition, the Court ordered that  
15 the parties “show cause why case numbers 07-5696 [*Bryant I*] and 08-1190 [*Bryant II*]  
16 should not be transferred to the Western District of Pennsylvania, where a federal judge  
17 has been overseeing a nearly identical case.” (*Bryant I* Docket No. 32.) Counsel for the  
18 respective parties have met and conferred and submit the following Joint Statement in  
19 compliance with the Court’s order.

20       **II. STATUS AND BACKGROUND OF ALL PENDING AND CLOSED**  
21       **WAGE-RELATED CASES**

22          On December 8, 2006, Plaintiffs’ counsel filed a complaint against Alderwoods  
23 Group, Inc. (“Alderwoods”) and Service Corporation International (“SCI”) in the U.S.  
24 District Court for the Western District of Pennsylvania on behalf of Deborah Prise and  
25 Heather Rady, captioned *Prise, et al. v. Alderwoods Group, Inc. and Service Corporation*

26 \_\_\_\_\_  
27       <sup>1</sup> On March 27, 2008, plaintiffs filed an Administrative Motion requesting that the  
28 scheduled conference be delayed until after the Court’s ruling on the threshold issues raised in  
plaintiffs’ pending motions for remand. (*Bryant I* Docket No. 40.) Defendants are opposed to  
this request and will file a timely opposition brief.

1 *International*, W.D. Pa. Case No. 06-1641 (“*Prise I*”), asserting claims under the Fair  
 2 Labor Standards Act of 1938 (“FLSA”) and various state laws. As a result of  
 3 determinations made in that case granting motions by defendants to dismiss certain claims,  
 4 Plaintiffs’ counsel subsequently filed five additional actions on behalf of various plaintiffs  
 5 against Alderwoods and/or SCI and/or certain SCI subsidiaries and employees of those  
 6 subsidiaries.<sup>2</sup> These actions are described below in chronological order.

7 *Prise I*. Deborah Prise and Heather Rady filed this action on December 8, 2006  
 8 alleging violations of the FLSA and the wage and hour laws of 38 states and territories.  
 9 Plaintiffs claimed that Alderwoods and SCI failed to pay overtime to employees for  
 10 certain types of alleged off-the-clock work – specifically, work allegedly performed while  
 11 on call, community service work, time spent studying for insurance licenses, time spent  
 12 receiving other required training, work allegedly performed during meal breaks,  
 13 unapproved overtime, appointments that were not considered part of employees’  
 14 scheduled hours, and unrecorded work – and sought compensatory damages, liquidated  
 15 damages, and attorneys’ fees, among other forms of relief. Plaintiffs also alleged that  
 16 defendants failed to include all remuneration in employees’ overtime calculations.  
 17 Plaintiffs brought the case as a collective action pursuant to FLSA Section 216(b) and also  
 18 sought Fed. R. Civ. P. 23 certification with respect to their state law claims. On April 19,  
 19 2007, Judge Joy Flowers Conti authorized FLSA collective action notice to employees in  
 20 seven Alderwoods job titles, and denied notice with respect to SCI. On June 8, 2007, the  
 21 Court granted defendants’ motion to dismiss plaintiffs’ state law class action claims,  
 22 declining to assert supplemental jurisdiction. On November 15, 2007, the Court granted  
 23 defendants’ motion to dismiss SCI from the case without prejudice, and denied leave to  
 24 amend the complaint to add certain SCI subsidiaries as defendants, finding that those  
 25

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26 <sup>2</sup> Plaintiffs assert one of those actions, described below as “*Prise II*”, was voluntarily  
 27 dismissed and refiled as two separate actions, *Helm* and *Bryant II*, in deference to one such  
 28 determination by the *Prise I* Court with respect to defendants’ argument that claims of  
 Alderwoods employees should be heard separately from claims of those employed at other SCI  
 subsidiaries. Thus, although five actions were filed, only four remain pending.

1 entities could not properly be joined in an action with Alderwoods. (Defendants assert,  
2 but plaintiffs disagree, that the Court also found that plaintiffs' allegations against SCI and  
3 its subsidiaries were too conclusory to state a claim.) Plaintiffs' FLSA claims against  
4 Alderwoods remain pending.

5 *Prise, et al. v. Alderwoods Group, Inc. and Service Corporation International*, N.D.  
6 Cal. Case No. 07-cv-5140-MJJ ("*Prise II*"). Deborah Prise, Heather Rady, and other  
7 plaintiffs filed this action against Alderwoods and SCI in the Alameda County Superior  
8 Court on July 9, 2007. Plaintiffs brought claims on behalf of both Alderwoods employees  
9 and employees who worked for other SCI subsidiaries for violations of wage and hour  
10 laws of 38 states and territories alleging that defendants failed to pay overtime for certain  
11 types of alleged off-the-clock work – specifically, work allegedly performed while on call,  
12 community service work, time spent studying for insurance licenses, time spent receiving  
13 other required training, work allegedly performed during meal breaks, unapproved  
14 overtime, appointments that were not considered part of employees' scheduled hours, and  
15 unrecorded work. Plaintiffs also alleged that defendants failed to include all remuneration  
16 in employees' overtime calculations. The complaint sought Rule 23 class certification of  
17 those claims. Defendants removed the case to the U.S. District Court for the Northern  
18 District of California and moved to dismiss the complaint. On December 5, 2007,  
19 Plaintiffs voluntarily dismissed the case.

20 *Bryant I*. Claude Bryant, along with other plaintiffs, filed this action on November  
21 8, 2007. Plaintiffs filed an amended complaint on March 5, 2008. Plaintiffs in this case  
22 are individuals who did not assert claims in the *Prise I* case, including those who did not  
23 timely file consent forms pursuant to notice issued by the *Prise I* Court to a subset of  
24 employees. They allege that Alderwoods, SCI, certain SCI subsidiaries, and employees of  
25 those subsidiaries violated the FLSA by failing to pay overtime for certain types of  
26 alleged off-the-clock work – specifically, work allegedly performed while on call,  
27 community service work, time spent studying for insurance licenses, time spent receiving  
28 other required training, work allegedly performed during meal breaks, unapproved

1 overtime, appointments that were not considered part of employees' scheduled hours, and  
2 unrecorded work. Plaintiffs also allege that defendants failed to include all remuneration  
3 in employees' overtime calculations. Plaintiffs seek compensatory, punitive, and  
4 liquidated damages; injunctive relief; and attorneys' fees and costs, among other forms of  
5 relief. Plaintiffs also assert that they are entitled to send collective action notice under  
6 FLSA Section 216(b) to other individuals who did not timely opt in to the *Prise I* case.  
7 Plaintiffs served their complaint on the various defendants on or about March 7, 2008.  
8 Defendants filed motions to dismiss the complaint and strike certain allegations on March  
9 27, 2008.

10 *Bryant II.* Claude Bryant, along with other plaintiffs, filed this action against SCI,  
11 certain SCI subsidiaries, and certain employees of those subsidiaries in Alameda County  
12 Superior Court on December 5, 2007. The complaint alleges that defendants violated the  
13 laws of California and 33 other states and territories by failing to pay overtime to  
14 employees for certain types of alleged off-the-clock work – specifically, work allegedly  
15 performed while on call, community service work, time spent studying for insurance  
16 licenses, work allegedly performed during meal breaks, unapproved overtime,  
17 appointments that were not considered part of employees' scheduled hours, and  
18 unrecorded work. Plaintiffs also allege that defendants failed to include all remuneration  
19 in employees' overtime calculations. Plaintiffs seek compensatory damages and penalties  
20 under the various states' laws, and also bring claims for conversion, fraud and deceit,  
21 misrepresentation, breach of contract, quantum meruit, and other theories. The complaint  
22 also requested class certification of plaintiffs' claims. On February 27, 2008, defendants  
23 removed the case to the U.S. District Court for the Northern District of California. On  
24 March 5, 2008, defendants filed motions to dismiss the complaint. On March 24, 2008,  
25 plaintiffs moved to remand the case to Alameda County Superior Court. These motions  
26 remain pending before the Court.

27 *Helm, et al. v. Alderwoods Group, Inc., et al.*, N.D. Cal. Case No. 08-cv-1164-SI  
28 ("*Helm*"). William Helm, Deborah Prise, and Heather Rady, along with other plaintiffs,



1 filed this action in Alameda County Superior Court on December 5, 2007. The complaint  
2 asserts claims against Alderwoods – and against SCI as a successor-in-interest. Plaintiffs  
3 later amended the complaint to add certain SCI subsidiaries and an individual defendant,  
4 Paul Houston. The complaint asserts that defendants violated the laws of California and  
5 28 other states and territories by failing to pay overtime to employees for certain types of  
6 alleged off-the-clock work – specifically, work allegedly performed while on call,  
7 community service work, time spent studying for insurance licenses, work allegedly  
8 performed during meal breaks, unapproved overtime, appointments that were not  
9 considered part of employees’ scheduled hours, and unrecorded work. Plaintiffs also  
10 allege that defendants failed to include all remuneration in employees’ overtime  
11 calculations. Plaintiffs seek compensatory damages and penalties under the various  
12 states’ laws, and also bring claims for conversion, fraud and deceit, misrepresentation,  
13 breach of contract, quantum meruit, and other theories. The complaint seeks class  
14 certification of plaintiffs’ claims. On February 27, 2008, defendants removed the case to  
15 the U.S. District Court for the Northern District of California. On March 5, 2008,  
16 defendants filed motions to dismiss plaintiffs’ complaint, with the exception of Paul  
17 Houston, whose motion to dismiss and strike was filed on March 28, 2008. On March 24,  
18 2008, plaintiffs moved to remand the case to Alameda County Superior Court. These  
19 motions remain pending before the Court.

20 *Stickle, et al. v. SCI Market Support Center, LP, et al.*, D. Ariz. Case No. 08-cv-83-  
21 MHM (“*Stickle*”). On January 15, 2008, James Stickle and other named plaintiffs filed  
22 this action against SCI, various SCI subsidiaries, and certain employees of SCI  
23 subsidiaries, asserting claims for violations of the FLSA, the Employee Retirement  
24 Income Security Act (“ERISA”), and the Racketeer Influenced and Corrupt Organizations  
25 Act (“RICO”). The complaint alleges that defendants failed to pay overtime to employees  
26 for certain types of alleged off-the-clock work – specifically, work allegedly performed  
27 while on call, community service work, time spent receiving required training,, work  
28 allegedly performed during meal breaks, unapproved overtime, appointments that were

1 not considered part of employees' scheduled hours, and unrecorded work. Plaintiffs also  
2 allege that defendants failed to include all remuneration in employees' overtime  
3 calculations. Plaintiffs seek to certify an FLSA collective action for those overtime claims  
4 and have filed a motion for collective action notification which is currently pending  
5 before the Court. Plaintiffs' ERISA claims allege that defendants failed to keep records of  
6 all time worked by plaintiffs sufficient to determine ERISA benefits due, and also allege  
7 the defendants breached their fiduciary duties. Plaintiffs' RICO claims are based on  
8 allegations of mail fraud for placing purportedly inaccurate payroll checks in the U.S.  
9 mail. Plaintiffs seek compensatory damages, liquidated damages, punitive damages, and  
10 attorneys' fees and costs. The complaint seeks collective action certification under FLSA  
11 Section 216(b), and Rule 23 class certification of the ERISA claims and RICO claims.  
12 Defendants moved to dismiss plaintiffs' complaint in motions filed on February 8, 2008,  
13 and the motions remain pending, as do plaintiffs' pending motion for collective action  
14 notification.

### 15 **III. THE PARTIES' POSITION ON TRANSFER**

#### 16 **A. The Parties' Joint Position Regarding *Bryant I***

17 As noted above, *Bryant I* asserts the same FLSA claims of Alderwoods employees  
18 currently asserted in the *Prise I* action, and neither case currently involves any state law  
19 claims. The *Bryant I* action differs only in that it was brought by individuals who have  
20 not asserted claims in the *Prise I* case, including those who did not timely file consent  
21 forms pursuant to notice issued by the *Prise I* Court to a subset of employees.<sup>3</sup> The  
22 parties agree that, in light of the similarity of the claims asserted in *Prise I* and *Bryant I*, it  
23 is in the interests of both the judiciary and the parties to have both of those actions heard  
24 in the same court, and neither party would oppose the transfer of this action to the  
25 Western District of Pennsylvania.

26  
27 <sup>3</sup> Plaintiffs note that *Bryant I* was not initially filed in the Western District of Pennsylvania  
28 because, at the time that action had filed, none of the plaintiffs in that action had been employed  
in Pennsylvania.

1 The parties differ only with respect to plaintiffs' position that any such transfer  
 2 should prohibit either party from asserting objections to the jurisdiction, forum or venue  
 3 following such transfer. Defendants assert that no defendant should be forced to abandon  
 4 a timely-asserted and valid objection to personal jurisdiction on account of a transfer of  
 5 the case if such objection is still valid after the transfer.

#### 6 **B. Plaintiffs' Position**

7 Plaintiffs submit that neither the *Helm* matter (asserting state law claims on behalf  
 8 of Alderwoods employees) nor the *Bryant II* matter (asserting state law claims on behalf  
 9 of employees who worked for SCI affiliates other than Alderwoods—hereinafter “SCI  
 10 employees”) should be transferred to the Western District of Pennsylvania.<sup>4</sup>

11 As an initial matter, neither the *Helm* nor *Bryant* matters should be pending before  
 12 a federal court at all, as set out in plaintiffs' pending motions to remand each of those  
 13 matters. The issue of this Court's subject matter jurisdiction over those two actions is a  
 14 threshold issue which must be determined before any other action, including the transfer  
 15 of these matters, is effectuated. Both of these actions should be remanded to Alameda  
 16 County Superior Court, where they were initially filed.

17 Furthermore, even if these matters were not subject to remand, their transfer to the  
 18 Western District of Pennsylvania would not be appropriate in light of the *Prise I* Court's  
 19 prior rulings that it was not the appropriate court to exercise jurisdiction over these state  
 20 law claims. Plaintiffs are unaware of any authority which would permit a District Court to  
 21 compel a sister court to change its prior holding regarding jurisdiction,  
 22 particularly where the sister court previously ruled that it chose not exercise jurisdiction.  
 23 Instead, the interests of judicial comity and respect for the *Prise I* Court's prior rulings  
 24 weigh strongly against returning either *Helm* or *Bryant II* to that Court.

25 Moreover, the transfer of these matters to the *Prise I* Court would also be  
 26 inappropriate in light of defendants' prior motions and arguments. Defendants previously

27  
 28 <sup>4</sup> In light of the parties' agreement regarding the *Bryant I* action, only the *Helm* and  
*Bryant II* matters are at issue.



1 moved the *Prise I* Court, requesting that Court decline to hear these state law claims.  
2 Having succeeded on that motion when the *Prise I* Court declined to exercise jurisdiction  
3 over these claims, defendants apparently hoped plaintiffs would not follow the *Prise I*  
4 Court's directive to refile these matters in state court. When plaintiffs did so, defendants  
5 first removed the action from state to federal court. Now, defendants seek to return the  
6 matter to the *Prise I* Court – despite the fact that defendants themselves previously  
7 convinced that same Court to decline to hear these claims. Defendants have effectively  
8 sent these claims on an unnecessary detour, delaying these claims from moving forward  
9 for more than 8 months.

10 Finally, the *Bryant II* actions should not be transferred to the Western District of  
11 Pennsylvania for the additional reason that it asserts only state law claims of SCI  
12 employees, and there are currently no claims of SCI employees pending before the *Prise I*  
13 Court. Again, the *Prise I* Court previously ruled on defendants' motion that the claims of  
14 Alderwoods employees could not be joined with and should be heard separately from  
15 those of SCI employees. For example, in opposing plaintiffs' motion for the *Prise I* Court  
16 to send collective action notification to SCI employees, defendants themselves argued that  
17 these claims should not be heard together:

18 the most fundamental justification for Section 216(b) collective actions is  
19 the “benefit” to both the parties and the judicial system from the “efficient  
20 resolution in one proceeding of common issues of law and fact arising from  
21 the same alleged ...activity.” Such “common issues of law and fact” are  
22 not present here where Alderwoods and the 180 SCI subsidiaries operated  
completely independently of each other, using their own policies and  
procedures, for most if not all of the liability period.

23 *Prise I*, W.D. Pa. Case No. 2:06-cv-01641-JFC, Docket No. 808 at 8 (internal citations  
24 omitted). The *Prise I* Court granted defendants' request to dismiss the claims of SCI  
25 employees from *Prise I* and ruled that those claims should be brought in a separate action  
26 That action, *Stickle*, is currently pending before the District of Arizona, where both  
27 parties' motions are currently pending before the Court, including defendants' expedited  
28

1 motions to dismiss.<sup>5</sup>

### 2 C. Defendants' Position

3 Defendants agree with the Court that, for purposes of judicial economy and  
 4 efficiency, *Bryant II* and the related *Helm* case<sup>6</sup>, should be transferred to the U.S. District  
 5 Court for the Western District of Pennsylvania, though it would not be appropriate to  
 6 consolidate those cases with the pending *Prise I* matter. As discussed below with only a  
 7 few exceptions, the claims and allegations in each of these cases were, or are, pending  
 8 before Judge Conti in some fashion, and it would be in the interests of both the courts and  
 9 the parties to have these matters proceed in a single court, with a judge familiar with the  
 10 posture and background of each case, rather than have the cases proceed on parallel tracks  
 11 in different jurisdictions.

12 Plaintiff's argument that this Court should decline to transfer these cases to Judge  
 13 Conti based on her decision to not exercise supplemental jurisdiction over the state law  
 14 claims asserted in *Prise I* is a complete red herring. Here, Defendants have removed the  
 15 *Bryant II* and *Helm* cases on the basis of CAFA jurisdiction, not supplemental jurisdiction.  
 16 Ironically, as defendants will discuss in detail in their oppositions to plaintiffs' remand  
 17 motions in *Helm* and *Bryant II*, plaintiff's took the position in *Prise I* that the Western  
 18 District of Pennsylvania **did** have jurisdiction over the state law claims in light of CAFA..  
 19 However, because this was not pled in the complaint as a basis for jurisdiction, Judge  
 20 Conti declined to consider this argument.

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21  
 22 <sup>5</sup> Defendants' mischaracterize statements of plaintiffs' counsel and the *Prise I* Court in  
 23 asserting that Court "contemplated" that *Bryant II* would be re-filed in the Western District of  
 24 Pennsylvania. Although the parties and the Court tentatively discussed some theoretical aspects  
 25 of plaintiffs' refiled at the time the SCI employees were dismissed from *Prise I*, that Court  
 26 certainly had not held or relied upon any presumption that the claims would necessarily be filed  
 27 before that same Court—in fact, defense counsel stated to plaintiffs' counsel after the oral  
 argument that defendants would likely oppose having the refiled action brought before the *Prise I*  
 Court. Following that hearing, upon reviewing the claims of the SCI employees and in light of  
 defendants' stated intention to object to having the SCI employees' claims heard by the *Prise I*  
 Court, plaintiffs refiled those claims in Arizona where, at that time, a significant number of the  
 SCI employees who sought to assert claims had been employed.

28 <sup>6</sup> On March 25, 2008, this Court issued a Related Case Order finding that *Helm* was  
 related to *Bryant I* and *Bryant II*. (*Helm* Docket No. 39.)

1 Plaintiffs' position that the *Bryant II* case should not be transferred to Pennsylvania  
2 based on Judge Conti's holding in *Prise I* that the SCI employees' claims should not be  
3 joined with Alderwoods is also without merit. Defendants still maintain that these claims  
4 should be kept separate, and this Court has not asked the parties to address the issue of  
5 consolidating *Bryant II* with *Prise I*. Rather, the issue at hand is whether *Bryant II* should  
6 be transferred to Judge Conti in light of the familiarity she has gained with the SCI entities  
7 based on her involvement *Prise I*. As discussed below, Defendants agree that transfer  
8 would be appropriate for that very reason.

9  
10 1. *Bryant II* – Case No. 08-cv-1190-SI

11 Though defendants do not agree that *Bryant II* is nearly identical to the *Prise I* case  
12 (as the Court indicated might be the case), defendants agree with the Court that it would  
13 be in the interests of judicial economy to transfer *Bryant II* to the Western District of  
14 Pennsylvania. As discussed above, *Bryant II* asserts state law claims against SCI, certain  
15 SCI subsidiaries, and certain employees of those subsidiaries; it does not assert claims  
16 against Alderwoods, which is the only remaining defendant in the *Prise I* action. While  
17 Alderwoods merged with an SCI subsidiary in November 2006, for the majority of the  
18 liability period in both *Prise I* and *Bryant II*, they were competitors – indeed, they were  
19 the two largest entities in the funeral home industry and directly competed with each other  
20 in almost every state in which each entity operated.

21 Nonetheless, defendants acknowledge that there may be significant efficiencies in  
22 having these cases heard in the same court. Most notably, Judge Conti in the Western  
23 District of Pennsylvania has significant familiarity with SCI as a result of the fact that SCI  
24 was a defendant in the *Prise I* case for nearly a year before being dismissed from that case  
25 in November 2006. Indeed, these very same claims – allegations of state law violations  
26 by SCI – were before Judge Conti before she declined to assert supplemental jurisdiction  
27 over state law claims and dismissed them from the *Prise I* action (in contrast, federal  
28 jurisdiction in *Bryant II* is based on the Class Action Fairness Act). It also is worth noting

1 that, when the Court dismissed SCI and the remaining FLSA claims against it from the  
2 case, plaintiffs' counsel informed the Court, and Judge Conti contemplated, that the *Prise*  
3 *I* plaintiffs would re-file their claims against SCI in the Western District of Pennsylvania.

4 Given Judge Conti's familiarity with the parties and the issues, defendants agree  
5 that *Bryant II* should be transferred as a separate case.<sup>7</sup> Consolidation of the cases would  
6 not be appropriate in light of the Western District of Pennsylvania's previous  
7 determination that claims against SCI and Alderwoods should not be heard in the same  
8 action.

9 3. *Helm* – Case No. 08-cv-1164-JSW.

10 *Helm* is the companion case to *Prise I*, asserting state law claims against  
11 Alderwoods for the exact same types of alleged off-the-clock violations, and asserting the  
12 exact same injuries, alleged in *Prise I*. In fact, plaintiffs' state law claims in *Helm*  
13 previously were before Judge Conti before she declined to assert supplemental jurisdiction  
14 and dismissed those claims without prejudice (in contrast, federal jurisdiction in *Helm* is  
15 based on the Class Action Fairness Act). Thus, transfer to the Western District of  
16 Pennsylvania serves the interests of judicial economy due to Judge Conti's familiarity  
17 with the issues and the parties.

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27 <sup>7</sup> The *Stickle* case currently pending in the U.S. District Court for the District of Arizona  
28 also asserts claims against SCI, SCI subsidiaries, and employees of those subsidiaries, although  
the claims are brought under federal law, not state law. The same reasons that support transfer of  
*Bryant II* also would support transfer of the *Stickle* case.

1 Dated: March 28, 2008

2  
3 Respectfully submitted,

4  
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